

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TAMMY CAMARENA**  
Claimant

VS.

**INTERSTATE BRANDS**  
Self-Insured Respondent

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Docket No. 1,024,006

**ORDER**

Respondent appealed the September 18, 2006, Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

Claimant alleges she sustained a series of repetitive traumas to her upper extremities while working for respondent from approximately May 26, 2005, through June 2005. Claimant initiated this preliminary hearing matter to request additional medical treatment for her alleged injuries.

Respondent challenged claimant's request for medical treatment on the basis that she had been provided medical treatment and had reached maximum medical recovery. In addition, respondent contends claimant aggravated her upper extremities in later employment and, therefore, it should not be responsible for the medical treatment now being requested.

In the September 18, 2006, Order, Judge Avery granted claimant's request for medical benefits. Consequently, respondent initiated this appeal.

The only issue on this appeal is whether claimant's present need for medical treatment is from the alleged injuries she sustained while working for respondent rather than from injuries she sustained while working for other employers after she left respondent's employ.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds and concludes the preliminary hearing Order for Medical Treatment should be affirmed.

Claimant began working for respondent in May 2005 and, according to her testimony, immediately began experiencing pain and other symptoms in her arms, elbows and shoulders. Claimant described her job as taking wire baskets from a conveyor, filling the baskets with packaged cake products and returning the filled basket to the next conveyor belt. Claimant explained that her job required the continuous use of her hands, elbows and shoulders throughout the entire workday.

Before working for respondent, claimant had never experienced any pain, numbness, tingling or burning sensation in her upper extremities.

Claimant reported her symptoms to respondent and was referred for medical treatment, which included physical therapy. Claimant was restricted to light duty and continued to work for respondent until sometime in June 2005. According to claimant, she worked for respondent for a little more than a month, when she terminated as respondent had placed her on a regular duty job that she could not perform.

Claimant then worked for approximately four weeks baking pizzas for Pyramid Pizza. According to claimant, that work did not affect her symptoms. Claimant next worked for approximately two weeks at Hopkins Manufacturing, where she removed "triple heads," shovel heads, and shovel handles from boxes and then sprayed the parts to ready them for assembly. According to claimant that work did not require her to work above the shoulder and did not require her to move her wrists in an up-and-down movement as her job with respondent. Claimant left Hopkins Manufacturing because she was unable to perform her job. Moreover, according to claimant, the work at Hopkins Manufacturing did not affect the symptoms that she developed while working for respondent.

Either before or after the Pyramid Pizza job, at her attorney's request claimant was evaluated by Dr. Pedro A. Murati. In his September 12, 2005, report, the doctor provided the following history:

This 45 year-old, right-hand dominant, Hispanic female sees me today at the request of her attorney. She was involved in a work-related injury during her employment with Dolly Madison, where she was employed for a month in finishing. The patient states that she had only been working for 2 or 3 days before she started to have pain in her shoulders, right arm, right elbow, and right hand. She states her job duties included gripping, throwing, and some overhead lifting. She states she

lifted boxes about 30 pounds. She states when she went to pick something up, her right hand cramped up. Her fingers went numb, and she could not relax her fingers, hand or arm on the right side. The patient went to Dr. Detwiler, the workmen compensation doctor. He sent the patient to physical therapy, which the patient states provided no relief. *The patient is currently unemployed.* She complains today of bilateral shoulder pain, right arm pain, right elbow pain, and right hand pain.<sup>1</sup> (Emphasis added.)

According to Dr. Murati's medical report, claimant's chief complaints were pain in both shoulders and pain in the right arm, right elbow and right hand. The doctor diagnosed myofascial pain syndrome of the right shoulder extending into the neck and right epicondylitis as a result of the work claimant performed for Dolly Madison (which is another name for respondent).

Next, claimant obtained employment with Hartford, Inc., which is an organization that assists the physically and mentally disabled. In that job, claimant worked as a caregiver for six adult women. During her 5 p.m. to 1 a.m. shift, claimant helped co-workers cook, helped feed the women, did laundry, cleaned the floors, and helped the women bathe. Again, claimant testified that work did not affect her upper extremity symptoms, which will wax and wane. After approximately one year, claimant left that employment in approximately May or June 2006 when she traveled outside the United States.

Dr. J. Mark Melhorn began treating claimant's upper extremities while she was employed by Hartford, Inc. According to Dr. Melhorn's records, claimant began working for Hartford, Inc., in either September or October 2005. In his April 11, 2006, notes, Dr. Melhorn noted claimant's history was difficult to follow. Nonetheless, the doctor diagnosed painful right and left upper extremities, neuropraxia, osteoarthritis at C4-5 and acromiohumeral narrowing on both the right and left.

According to Dr. Melhorn's office notes, claimant was able to perform her job duties with Hartford, Inc., and her symptoms were "somewhat progressive, although slow over time."<sup>2</sup> Dr. Melhorn had claimant undergo nerve tests, which indicated claimant had bilateral carpal tunnel syndrome. Accordingly, claimant had injections in both wrists. Dr. Melhorn saw claimant for the third and final time on May 26, 2006, when claimant reported her hands had bothered her a bit more and she felt a pulling or popping sensation in her right wrist a few days before. The doctor again noted claimant had bilateral carpal tunnel

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<sup>1</sup> P.H. Trans., Resp. Ex. B.

<sup>2</sup> *Id.*, Resp. Ex. A.

syndrome with symptoms into the elbow, shoulder and neck. Finally, claimant told the doctor she was going to Pakistan with her daughter.

In a May 31, 2006, letter to respondent's attorney, Dr. Melhorn advised claimant had symptoms from bilateral carpal tunnel syndrome, which probably existed before her employment with respondent. The doctor indicated it was possible that the carpal tunnel syndrome was aggravated by the work claimant performed for respondent. Moreover, the doctor advised claimant experienced increased symptoms following June 2005 and, therefore, it would appear that something has contributed to her symptoms in addition to the work she performed for respondent.

Upon returning to the United States, however, claimant resumed her employment with Hartford, Inc., where she worked until approximately one month before her September 2006 preliminary hearing to pursue a better job with benefits.

During cross-examination, claimant also disclosed she continues to work as a part-time personal care attendant, which is work that she was performing while she was employed by respondent and which she has performed for three years. In that job claimant works about 20 hours per week shopping and taking a disabled person on errands.

The record does not disclose all the starting and ending dates of claimant's various employments. But considering claimant's testimony as a whole, especially the estimated length of her various jobs and the estimated starting and ending dates that were provided, the present record indicates there was very little time between the various jobs described. In short, claimant is either mistaken regarding the estimated duration of her various jobs or the beginning and ending dates she provided.

Nonetheless, claimant left respondent's employ in June 2005 and over the next year worked at three other employers. The record would indicate claimant worked only weeks at Pyramid Pizza and only weeks at Hopkins Manufacturing. Conversely, she worked over a year as a caregiver at Hartford, Inc., which appears to be a much less physical job than the work she performed at respondent, Pyramid Pizza or Hopkins Manufacturing.

Judge Avery found claimant's testimony persuasive and determined claimant was entitled to receive medical benefits from respondent. The undersigned agrees. The evidence establishes that claimant had symptoms in both upper extremities due to the work she performed for respondent. Since leaving respondent's employ, those symptoms have not resolved despite the fact that claimant sought out and found much less physically demanding work.

Claimant has established a prima facie case that the medical treatment she presently needs is related to the bilateral upper extremity injuries she sustained working

for respondent. Moreover, the evidence does not establish the medical treatment in question is for injuries claimant sustained while working for other employers after she left respondent's employ.

Despite respondent's argument that claimant was not having left arm complaints when she saw Dr. Murati in September 2005, the medical notes respondent provided to Dr. Melhorn for his evaluation indicate claimant was treated by Dr. Todd Detwiler in May and June 2005 for bilateral upper extremity tendinitis and in June 2005 claimant complained to her physical therapist of numbness and tingling in both hands. Accordingly, the record establishes that claimant was experiencing symptoms in both upper extremities when she left her employment with respondent.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**WHEREFORE**, this Board Member affirms the September 18, 2006, Order for Medical Treatment entered by Judge Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 2006.

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BOARD MEMBER

c: Diane F. Barger, Attorney for Claimant  
P. Kelly Donley, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge

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<sup>3</sup> K.S.A. 44-534a.